

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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1 STEVEN WAYNE SWEDBERG, 2 Plaintiff(s), 3 v. 4 KEITH E. SMITH, et al., 5 Defendant(s).	Case No. 2:21-cv-00878-JAD-NJK Report and Recommendation
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1 ROSEMARY SALES, 2 Plaintiff(s), 3 v. 4 BLACKSTONE GROUP, L.P., et al., 5 Defendant(s).	Case No. 2:21-cv-00883-JAD-NJK Report and Recommendation
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21 SIMONE C. DUVEN, 22 Plaintiff(s), 23 v. 24 CRAIG M. NASH, et al., 25 Defendant(s).	Case No. 2:21-cv-00888-JAD-NJK Report and Recommendation

<p>1 JAMES MARTIN WOLF, 2 Plaintiff(s), 3 v. 4 RICHARD SOLOMONS, et al., 5 Defendant(s).</p>	<p>Case No. 2:21-cv-00895-JAD-NJK Report and Recommendation</p>
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6 This is one of 140 cases initiated by Hank Falstad, who identifies himself as an ADA
7 architect. In its order dated May 7, 2021, the Court required Plaintiff to take action should Plaintiff
8 wish to continue with the litigation. In particular, Plaintiff was required to file an amended
9 complaint properly signed either by Plaintiff or by a licensed attorney. In addition, Plaintiff was
10 required to either pay the filing fee or file an application to proceed *in forma pauperis*. The
11 deadline for compliance was set at June 7, 2021. The Court warned that failure to comply with
12 that order may result in dismissal of the case. To date, Plaintiff has not complied with these
13 requirements.

14 The Federal Rules of Civil Procedure mandate that a complaint initiating a case must be
15 signed by the plaintiff herself or by her attorney. Fed. R. Civ. P. 11(a). “The court must strike an
16 unsigned paper unless the omission is promptly corrected after being called to the attorney’s or
17 party’s attention.” *Id.* Moreover, initiating a federal lawsuit generally requires the payment of a
18 filing fee. *See* 28 U.S.C. § 1914(a). To the extent a plaintiff cannot afford to pay the filing fee,
19 she must file an application to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(a). When a
20 plaintiff does not pay the filing fee or file an application to proceed *in forma pauperis*, the case
21 may be dismissed. *See, e.g., Desai v. Biden*, 2021 WL 38169, at *1 (E.D. Cal. Jan. 5, 2021),
22 *adopted*, 2021 WL 276236 (E.D. Cal. Jan. 27, 2021).

23 As noted above, there is not a properly signed complaint in this case and that defect has
24 not been cured despite an opportunity to do so. Moreover, Plaintiff has not paid the filing fee or
25 filed an application to proceed *in forma pauperis*.

26 The undersigned finds that dismissal without prejudice is appropriate under the
27 circumstances. A Court may dismiss an action based on a party’s failure to prosecute her case or
28 obey an order. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992); *Malone v.*

1 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987); *Henderson v. Duncan*, 779 F.2d 1421,
 2 1424 (9th Cir. 1986). In determining whether to dismiss an action on one of these grounds, the
 3 Court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the Court's
 4 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 5 disposition of cases on their merits; and (5) the availability of less drastic alternatives. *E.g., Ferdik*,
 6 963 F.2d at 1260–61.

7 These factors weigh in favor of dismissal here. The first two factors, the public's interest
 8 in expeditiously resolving this litigation and the Court's interest in managing its docket, weigh in
 9 favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
 10 dismissal because a presumption of injury arises from the occurrence of unreasonable delay in
 11 filing a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d
 12 522, 524 (9th Cir. 1976). A Court's warning to a party that its failure to obey an order will result
 13 in dismissal satisfies the fifth factor's "consideration of alternatives" requirement, *see, e.g., Ferdik*,
 14 963 F.2d at 1262, and that warning was given here. The fourth factor, the public policy favoring
 15 disposition of cases on their merits, is greatly outweighed by the factors favoring dismissal.

16 Accordingly, the undersigned **RECOMMENDS** that this case be **DISMISSED** without
 17 prejudice.

18 Dated: August 3, 2021

19 _____
 20 Nancy J. Koppe
 United States Magistrate Judge

21 **NOTICE**

22 This report and recommendation is submitted to the United States District Judge assigned
 23 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and
 24 recommendation must file a written objection supported by points and authorities within fourteen
 25 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file
 26 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951
 27 F.2d 1153, 1157 (9th Cir. 1991).

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